

Chapter 85

FURNACES, OUTDOOR

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[HISTORY: Adopted by the Borough Council of the Borough of Westfield 11-10-2009 by Ord. No. 307. Amendments noted where applicable.]

§ 85-1. Purpose and Scope.

With the adoption of this chapter the Borough Council of the Borough of Westfield establishes and imposes restrictions upon the installation, operation and maintenance of outdoor furnaces within the limits of the Borough of Westfield ("Borough") for the purpose of securing and promoting the public health, welfare and safety of the Borough and its inhabitants, and to ensure that existing and future outdoor furnaces are properly installed, operated and maintained and to limit the effects of the same on the health, welfare and safety of the residents of the Borough.

§ 85-2. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

APPEALS BOARD — The Council of Governments (COG).

CHIMNEY — Any structure, vertical or otherwise, enclosing a flue or flues that carry off smoke or exhaust from a furnace, especially that part of such structure extending above a roof.

CLEAN WOOD — Seasoned wood without paint or other coating, and wood that has not been treated with, including but not limited to copper chromium arsenate, creosote, or pentachlorophenol.

COMPLAINT — A written and signed complaint from a resident of the Borough verifying that specific terms or conditions of this chapter are being violated. All complaints shall include the full name and address of the complainant; the provision or provisions of this chapter which are being violated; the name and address of the alleged person, company or organization in violation; and the time, date and place of the alleged violation. For the purposes of this chapter, terms and conditions shall be setback requirements; height requirements; location requirements; permit requirements; operation requirements; or installation requirements. The Building Code Official (BCO), or designated official, may undertake enforcement proceedings against an owner, company or organization if it is

determined that a term or condition of this chapter is being violated. The Borough, at its sole discretion, shall not get involved with private nuisance claims between private property owners. Upon receipt of a written complaint, the Building Code Official, or designated official, may investigate the claims set forth therein and issue a decision to the complainant, either verbally or in writing, within 20 business days.

DOWNWIND — The prevailing winds for northern Pennsylvania are westerly; therefore, "downwind," for this chapter, is defined as lying eastward from a reference point, such as the center of a circular furnace stack.

DWELLING — A residence, whether or not currently occupied.

EPA-CERTIFIED — An outdoor furnace for which the manufacturer has supplied a certificate of compliance, or other proof of compliance, with Environmental Protection Agency (EPA) recommendations and/or promulgated emission standards for that particular furnace or appliance type and model.

EXISTING OUTDOOR FURNACE — An outdoor furnace that is fully installed and/or operational in the Borough as of the enactment date of this chapter.

FIREWOOD — Trunks and branches of trees and bushes, not including leaves, needles, vines or brush.

OBSTRUCTION — A solid structure, which may be a dwelling or building, that blocks the wind from blowing directly upon a particular dwelling or building. Trees and bushes do not constitute an obstruction. In addition, partial obstructions, such as fences or portions of buildings, shall also be deemed insufficient to be considered an obstruction.

OUTDOOR FURNACE — Any equipment, device or apparatus, or any part thereof, which is installed, affixed or situated outdoors for the primary purpose of combustion of fuel to produce heat or energy used as a component of a heating system providing heat for any interior space. This includes existing outdoor furnaces.

§ 85-3. Applications and permits.

After the effective date hereof, no outdoor furnace shall be maintained, installed or operated in the Borough without the owner first submitting an application in accordance with the terms contained herein. The application/permit process is as follows:

- A. Any person, business or association (hereinafter referred to as "applicant") who desires to install, maintain or operate an outdoor furnace, after the effective date hereof, upon his, her or its property in the Borough, must obtain a Borough building permit and complete and submit it to the Westfield Borough Office, located at 429 East Main Street, Westfield, Pennsylvania 16950, along with the requisite application fee, at least 30 days prior to the desired date of installation or operation. Permit application forms shall be available at the Borough Office during regular business hours.
- B. The applicant must provide a manufacturer's statement of compliance with EPA and DEP standards and attach same to the building permit.
- C. The applicant shall submit, with proof of low emission, a copy of the manufacturer's recommended operating parameters and all applicable information related to fuels

- necessary to achieve low emissions. This information, together with any amendments or modifications that may be forthcoming, shall be kept on file at the Borough Office along with copies of the application, permit, proof of certification and all other necessary documents.
- D. If an existing chimney is to be utilized, a written statement from the local Fire Chief or Building Code Enforcement Officer, stating that the chimney has been inspected and is suitable for use with appropriate fuels, shall be submitted with the application. If a new chimney is to be constructed, a building permit may be required.
- E. Within 20 business days of receipt of a complete application, and other required documents as described herein, and, if necessary, after a site inspection, a written decision shall be forwarded to the applicant from the Building Code Officer, or other Borough official (hereinafter "Official"), which either grants or denies a permit to install, operate or maintain the outdoor furnace.
- F. The applicant may appeal a denial to the Appeals Board in accordance with § 85-8 hereof. Written notice of the request for appeal shall be filed in the Borough Office within 10 calendar days of the date of denial, along with all appropriate fees.
- G. If the Building Code Official, or designated official of the Borough, determines that all the provisions of this chapter and the application process have been met, the official may issue a permit for the applicant to install, operate or maintain the outdoor furnace in accordance herewith.
- H. If the Building Code Official, or designated official of the Borough, determines that any person, company or organization is violating a provision or provisions of this chapter, his, her or its permit may be revoked and/or a cease-and-desist order may be charged against any offending person, company or organization.
- I. In the event that an application is denied, a permit is revoked or a cease-and-desist order is issued, notice shall be given to the applicant, permittee or offending person, company or organization. The notice shall:
- (1) Be in writing;
 - (2) Include a description of the property sufficient for identification;
 - (3) Include a statement of the reason or reasons why the notice is being issued; and
 - (4) Include a correction order allowing a reasonable time (not to exceed 30 calendar days) for changes and/or corrections to be made to bring the outdoor furnace into compliance with the provisions of this chapter.

§ 85-4. Fees.

Standard Westfield Borough building permit schedule of fees.¹

1. Editor's Note: For building permit fees, see § A137-4B(1).

§ 85-5. Use and location.

- A. All outdoor furnaces must meet applicable regulations and recommendations of the EPA and Pennsylvania Department of Environmental Protection (PADEP). All outdoor furnaces shall meet emission certification requirements unless expressly exempted otherwise. The applicant shall have the burden of proving that the outdoor furnace he or she desires to install, operate and maintain meets all existing laws, regulations and certifications.
- B. All outdoor furnaces are subject to a minimum setback of 50 feet from any dwelling or other structure, within guidelines of county ordinances.
- C. All noncatalytic outdoor furnaces must be certified not to exceed EPA particulate matter emission standards. All catalytic outdoor furnaces must be certified not to exceed EPA particulate matter emission standards. If the EPA, or other agency, should promulgate stricter standards, the stricter standards shall apply.
- D. Chimneys must comply with the following rule: 20 feet higher than the highest point the chimney exits the roof and 20 feet higher than anything within 10 feet.
- E. Outdoor furnaces may only burn fuels which said furnaces were designed to burn and which are approved by the manufacturer. None of the following fuels or materials may be burned in any outdoor furnace under any circumstances:
 - (1) Any wood that does not meet the definition of "clean wood";
 - (2) Garbage;
 - (3) Tires;
 - (4) Waste petroleum products;
 - (5) Paint and paint thinners;
 - (6) Construction and demolition debris;
 - (7) Plywood;
 - (8) Manure;
 - (9) Asphalt products;
 - (10) Animal carcasses;
 - (11) Plastic or rubber products;
 - (12) Household trash;
 - (13) Leaves, or wet and soggy wood;
 - (14) Recyclable material;
 - (15) Oiled coal; or
 - (16) Wood pellets and grain products, unless specified for use in a designated furnace.

- F. Ashes or residue shall not be accumulated upon any property. Any accumulation of ashes or residue must be disposed of appropriately. It is the responsibility of the owner to ensure that no live coals or embers are present in any ashes or residue in such a manner as to constitute a fire hazard.
- G. No outdoor furnace shall be altered or modified such that the applicable certification emission tests would be invalidated. Any antipollution device installed by the manufacturer, or required by this chapter or otherwise, shall not be disconnected or rendered inoperative. Operation of the outdoor furnace shall be in accordance with the manufacturer's written instructions. This shall include, if applicable, periodic inspection and replacement of catalytic combustors.
- H. All outdoor furnaces shall be installed, operated and maintained in strict conformance with the manufacturer's instructions, the provisions of this chapter, applicable building codes, and all applicable local, state and federal laws and regulations. In the event of a conflict, this chapter shall apply, unless the manufacturer's instructions or regulations are stricter, in which case the manufacturer's instructions or regulations shall apply. A copy of the manufacturer's installation and/or operating instructions shall be filed with the Borough Office, by the applicant, together with any subsequent amendments or modifications.
- I. All outdoor furnaces are prohibited from operating between May 31 and August 31 of each year.
- J. For all outdoor furnaces, a chimney stack greater than 15 feet in height must be secured against high winds and shall be constructed, installed and maintained in such a manner that it does not constitute a safety hazard. All chimney stacks shall be constructed in accordance with all rules and regulations of the Borough and commonwealth and shall be constructed in accordance with the manufacturer's instructions.

§ 85-6. Existing outdoor furnaces.

- A. Outdoor furnaces that exist within the Borough limits on the date this chapter takes effect shall be subject to the terms and conditions of this chapter.
- B. In order to continue to maintain and operate an existing outdoor furnace, the owner must submit an application for a permit to operate his or her existing outdoor furnace, in accordance with § 85-3 hereof. Said application must be submitted within 30 days of the effective date hereof.
- C. An application submitted under this section shall act as a temporary permit to operate and maintain the existing outdoor furnace so that the applicant has time to comply with the application process and meet the terms and conditions of this chapter.
- D. A temporary permit under this section is only effective for 60 days from the date the application is submitted. This provision does not apply to new installations; this only applies to outdoor furnaces existing within the Borough on the date this chapter is enacted.
- E. An owner of an existing outdoor furnace who gives notice of the same by submitting an application within 30 days of the effective date of this chapter, shall be

grandfathered in as it relates to setback requirements if his or her outdoor furnace is located within 50 feet of a neighbor's property line. This nonconforming use shall extend only to a new outdoor furnace installed in the same location as an outdoor furnace existing at enactment of this chapter.

- F. An owner who fails to file such an application, or who is denied a permit for reasons contained herein, shall not be permitted to maintain and operate the existing outdoor furnace within the Borough.
- G. In the event that an outdoor furnace is determined to be 50% torn down, physically deteriorated, rusted or decayed, the furnace must be removed and/or replaced with a new unit. In the event a unit needs to be replaced, a new application must be submitted and all other provisions hereof must be followed.

§ 85-7. Testing and inspections.

- A. If a complaint under this chapter is received by the Borough, the Borough may conduct an inspection to determine if the outdoor furnace is being operated and maintained in accordance with this chapter, EPA and DEP regulations, or the manufacturer's recommended operating parameters. If it is determined that the owner/operator is violating a provision hereof, the Borough may impose an inspection fee in addition to other enforcement remedies contained herein.
- B. In the event the owner has received updated recommendations from the manufacturer, the same shall be utilized to determine compliance. The owner shall be required to correct any deviations found as a result of the inspection. Failure to correct the deviations within 30 calendar days shall constitute a violation of this chapter. The owner's refusal to allow the inspection shall result in immediate permit revocation.
- C. If, at the sole discretion of the Building Code Officer, or designated official, an inspection is required as part of the application process as a condition of receiving a permit, an inspection fee may be imposed in accordance with § 85-4 hereof.

§ 85-8. Appeals Board.

- A. Any applicant, permittee or person affected by a decision of the Building Code Official, or designated official of the Borough, may appeal, for the reasons set forth in § 85-8B hereof, to the Appeals Board, provided that a written application for appeal is submitted. The notice of appeal shall:
 - (1) Be in writing;
 - (2) Be submitted with the applicable appeal application fee;
 - (3) Be submitted within 10 calendar days of the decision being appealed;
 - (4) State the reasons for the appeal, with reasonable particularity, including but not limited to the sections of this chapter that are applicable.
- B. The Appeals Board shall have jurisdiction to hear appeals related to the following:

- (1) Appeal of denial of application;
 - (2) Appeal of denial of permit;
 - (3) Appeal of denial or revocation of permit;
 - (4) Appeal of cease-and-desist order; and
 - (5) Appeal for variance of the terms of this chapter.
- C. Upon receipt of an appeal, a hearing shall be scheduled before the Appeals Board within 60 calendar days, or in a manner to allow for appropriate advertising, and shall be held at the Borough Office or other designated location within the Borough. Notice of the hearing shall be appropriately advertised and posted at the Borough Office and shall be served by the Borough via United States first-class mail or by hand delivery, upon the appellant.
- D. The Appeals Board shall consist of COG (Council of Local Governments), along with a member of the Borough Council Planning Committee.
- E. The Appeals Board Chairperson shall designate at least four Appeals Board members who must be present for the hearing. The burden shall be on the appellant to supply all necessary testimony, exhibits and information that the Appeals Board needs to make a decision.
- F. The Appeals Board may dismiss the case sua sponte if it determines, inter alia, that the appellant has not complied with the Appeal process or provided necessary information. The Borough Solicitor may be present at this hearing, and the appellant may be represented by counsel.
- G. At least four Appeals Board members shall issue a written decision within 30 days of the last hearing for a given appeal. The Board may grant or deny an appeal, in full or in part, or provide for conditional approval where appropriate. The decision shall be forwarded to the appellant by hand delivery or regular mail. A copy of the decision shall be available at the Borough Office. The Appeals Board may impose additional conditions or restrictions upon the appellant as it deems appropriate. The decision of the Appeals Board shall be final.

§ 85-9. Variance procedure.

- A. In considering a variance appeal in accordance with § 85-8, hereinabove, the Appeals Board shall consider the following factors:
- (1) The degree of compliance with published guidelines and recommendations for outdoor furnace setbacks, chimney stack heights, and emissions;
 - (2) Prior complaints concerning the outdoor furnace;
 - (3) Comments and/or concerns of residents within 1,000 feet of the outdoor furnace;
 - (4) Minimum setback from neighboring boundary lines of 50 feet;

- (5) Chimney stack height a minimum of two feet and a maximum of five feet above the peak of neighboring dwellings; and
 - (6) Either retrofit to meet EPAs Phase I emission standards or upgrade to meet EPAs Phase II emission standards.
- B. In considering a variance appeal, the Appeals Board may consider the following factors:
- (1) Whether the outdoor furnace maintains or enhances the character of the area in which it is located;
 - (2) Whether the outdoor furnace constitutes a safety or health hazard or a nuisance or has a noxious effect on the surrounding area either due to appearance or operation;
 - (3) Whether the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible for the regulation at issue;
 - (4) Whether, in the case of a hardship, that hardship has been created by the applicant;
 - (5) Whether the variance, if authorized, will alter the essential character of the neighborhood or district in which the outdoor furnace is located, or will substantially or permanently impair the appropriate use or development of adjacent property, or will be detrimental to the public welfare.

§ 85-10. Enforcement.

It shall be the duty of the Building Code Official or designated official, to enforce the terms of this chapter and to secure compliance with the requirements hereof. In the event a person, company or organization does not comply with the terms of this chapter, a notice of violation and/or cease-and-desist order, the Building Code Official, or designated official, may commence civil and/or criminal proceedings against the offending person, company or organization. The owner shall pay the costs of such measures, including but not limited to the costs of any equipment and reimbursement of wages for Borough employees or agents. The Borough, in such event, and pursuant to its statutory or otherwise authorized police powers, shall have the right and power to enter upon the owner's premises to accomplish the foregoing.

§ 85-11. Violations and penalties.

Any person, firm, or corporation who shall violate any provision of this chapter shall, upon conviction thereof, be sentenced to pay a fine of no less than \$300 and no more than \$1,000, or the maximum amount permitted by law, and, in default of payment of said fine, to imprisonment for a term not to exceed 90 days. Every day that a violation of this chapter continues shall constitute a separate offense. In addition, violation of any provision of this chapter may result in suspension or revocation of a permit. The Borough or its duly appointed representative shall forward such suspension or revocation notice in writing via

United States first-class mail. Upon receipt of such notice, the property owner or occupant shall immediately cease utilizing the outdoor furnace. A suspended permit may be reinstated once the condition which resulted in suspension, is remedied and a letter from the Borough or its duly designated official authorizing reinstatement is received.